

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JESSICA GRUNDSTROM,

Plaintiff,

v.

CARRIER COACH, INC.,
and ALLEN MILLER,

Defendants.

DECISION AND ORDER
13-CV-832-A

This employment discrimination and retaliation case brought by Jessica Grundstrom was referred to Magistrate Judge Leslie G. Foschio pursuant to 28 U.S.C. § 636(b)(1) for pretrial proceedings. Magistrate Judge Foschio issued a Report and Recommendation (Dkt. No. 60) upon a motion under Fed. R. Civ. P. 56 for summary judgment filed by the defendants, Carrier Coach, Inc., and Allen Miller. The Magistrate Judge recommends that the Court find there are no genuine disputes of material fact, and that defendants are entitled to judgment as a matter of law.

Plaintiff Grundstrom filed objections to the Report and Recommendation. Dkt. No. 64. Defendants Carrier Coach and Miller responded. Dkt. No. 66. Plaintiff filed a reply. Dkt. No. 67.

Pursuant to 28 U.S.C. § 636(b)(1)(B), the Court makes a *de novo* determination of those portions of the Report and Recommendation to which proper objections have been made. The Court presumes the parties' close familiarity with the record on the summary judgment motion. Although the Magistrate Judge found that all of the facts stated in the defendants' Local Rule 56 Statement should be deemed admitted

because of the inadequacy of plaintiff's responding Statement of Facts, Dkt. No. 60, p. 19, the Magistrate Judge worked through the unnecessarily confused submissions of plaintiff and determined that plaintiff has insufficient evidence under Fed. R. Civ. P. 56 to raise a material issue of fact for trial. Accordingly, after *de novo* consideration of the objected-to portions of the Report and Recommendation, and reviewing the remainder of the Report and Recommendation for clear error or manifest injustice¹, the Court adopts the proposed findings and recommendations of the Magistrate Judge, and the defendants' motion for summary judgment (Dkt. No. 19) is granted. The Clerk shall enter Judgment for the defendants and close the case.

IT IS SO ORDERED.

Richard J. Arcara

HONORABLE RICHARD J. ARCARA
UNITED STATES DISTRICT COURT

Dated: April 23, 2018

¹ The Court applies the clear error or manifest injustice standard of review based upon the general rule for discretionary consideration of forfeited issues in the Second Circuit Court of Appeals, see *Mhany Mgmt., Inc. v. Cty. of Nassau*, 819 F.3d 581, 615 (2d Cir. 2016), in order to identify potentially meritorious issues for consideration in the district court in the first instance.